

## STATE OF ILLINOIS

### ILLINOIS COMMERCE COMMISSION

The Burlington Northern and Santa Fe Railway Company,  
Petitioner,

V.

Hale Township, Warren County, Illinois; and Department of  
Transportation of the State of Illinois,  
Respondents.

T03-0038

Petition for an order from the Illinois Commerce Commission  
authorizing the permanent closure and removal of the at grade  
crossing located at intersection of the tracks of The Burlington  
Northern and Santa Fe Railway Company ("BNSF") and Township  
Road 50<sup>th</sup> Street in Hale Township, Warren County, Illinois,  
Milepost 181.28 DOT No. 079 228W; the permanent closure and  
removal of the at grade crossing located at the intersection of  
BNSF's tracks and Hale Township Road, 180<sup>th</sup> Avenue, Milepost  
181.14, DOT No. 079 227P; the construction of a connecting road  
located south of and parallel to BNSF's track which would serve to  
connect Hale Township Road, 50<sup>th</sup> Street and Hale Township Road  
180<sup>th</sup> Avenue; and, the construction of a new at grade crossing  
carrying Hale Township Road 50<sup>th</sup> Street over the trackage of  
BNSF, with the cost of such project to be borne by the parties in  
accordance with law and that a substantial portion of the cost be  
borne by the Grade Crossing Protection Fund.

### ORDER

By the Commission:

On April 28, 2003, The Burlington Northern and Santa Fe Railway Company ("Railroad") filed the above verified petition and thereafter on May 9, 2003 filed its amended verified petition naming as respondents Tompkins Township, Warren County, Illinois; Hale Township, Warren County, Illinois; Warren County, Illinois; and the State of Illinois, Department of Transportation ("IDOT").

Pursuant to notice, this matter came on for hearing before a duly authorized Administrative Law Judge of the Illinois Commerce Commission ("Commission") at the offices of the Commission in Springfield, Illinois on July 7, and 22, 2003. Appearances were entered by counsel for the Railroad, by a staff member of the Railroad Section, Transportation Division of the Commission and by a representative from IDOT. At the conclusion of the hearings, the record was marked "Heard and Taken".

Notice was given to the public of the proposed closure of the Tompkins Township Road, 50<sup>th</sup> Street crossing in Tompkins Township, Warren County, Illinois; the proposed closure of the Tompkins Township Road, 180<sup>th</sup> Avenue crossing; the proposed construction of a connecting road which would serve to connect Tompkins Township Road, 50<sup>th</sup> Street and Tompkins Township Road, 180<sup>th</sup> Avenue, and the establishment of a new at grade crossing equipped with a concrete crossing surface and automatic flashing light signals and gates with constant warning time circuitry, in a newspaper of general circulation published in Warren County.

Testimony was presented by the Railroad through Cheryl Townlian, Manager Public Projects for the Railroad. Ms. Townlian testified that the Railroad operates a double main line track in a generally Northeast to Southwest direction through Tompkins Township. Tompkins Township Road, 50<sup>th</sup> Street is under the jurisdiction of Tompkins Township and runs in a north/south direction and crosses the tracks of the Railroad on less than a 90<sup>o</sup> angle. Tompkins Township Road, 50<sup>th</sup> Street is a two (2) lane gravel road. Average daily traffic over Tompkins Township Road 50<sup>th</sup> Street in the area of the crossing is twenty (25) vehicles per day. The subject at grade crossing is equipped with standard reflectorized crossbuck signs with a timber crossing surface. There are no visibility impediments in any of the four (4) quadrants at the subject crossing, however, the approach grades to the Tompkins Township Road, 50<sup>th</sup> Street at grade crossing do not comply with the requirements of 92 Illinois Administrative Code 1535. Approximately thirty (30) freight trains and two (2) Amtrak trains travel over the crossing daily with timetables speeds of sixty (60) mph. and seventy nine (79) mph., respectively.

Tompkins Township Road, 180<sup>th</sup> Avenue crossing, is also under the jurisdiction of Tompkins Township. Ms. Townlian further testified that said roadway runs in an east to west direction and crosses the double main line tracks of Railroad on an approximate 30<sup>o</sup> angle. The aforesaid roadway is a two (2) lane gravel road, equipped with standard reflectorized crossbuck signs and a timber crossing surface. The approaches to the Tompkins Township Road, 180<sup>th</sup> Avenue comply with the requirements of 92 Illinois Administrative Code 1535. There are no sight line impediments in any of the quadrants at the crossing location. Average daily vehicular traffic at the Tompkins Township Road, 180<sup>th</sup> Avenue crossing is approximately 50 vehicles per day and includes school busses. Rail traffic over the subject crossing is the same as at the Tompkins Township Road, 50<sup>th</sup> Street crossing.

The Railroad proposes that both the Tompkins Township Road, 50<sup>th</sup> Street crossing and the Tompkins Township Road, 180<sup>th</sup> Avenue crossing be closed, abolished and barricades conforming to 92 IAC 1535 be installed. After the closing of the Tompkins Township Road, 50<sup>th</sup> Street crossing and the Tompkins Township Road, 180<sup>th</sup> Avenue crossings, the surfaces will be removed and barricades will be installed to the north, all at the Railroad's expense.

The Railroad proposes that a new at grade crossing be established with said crossing constructed with a new thirty two (32) foot concrete crossing surface costing approximately \$51,200 and equipped with new automatic flashing light signals and gates ("AFLS/G") with constant warning time ("CWT") circuitry at a cost of approximately \$165,662.

Ms. Cheryl Townlian further testified that the Railroad retained the engineering firm of Bruner, Cooper and Zuck, Inc. to design a connecting road between Tompkins Township Road, 50th Street and Tompkins Township Road, 180<sup>th</sup> Avenue. Plans for the connecting road include construction of an aggregate surface course and compacted subgrade, the driving surface being two (2) - ten (10) foot wide lanes with two (2) foot shoulders, with the total roadway to be approximately 1,515 feet in length. Tompkins Township and Warren County have reviewed the proposed design plans and approve the same. On completion of construction, the proposed connecting roadway would be maintained by Tompkins Township. The cost of the proposed roadway is estimated at \$96,953. The Railroad has completed land acquisition for the proposed roadway at a total cost of \$28,641.02.

Jeff Harpring, IDOT, testified that IDOT has agreed to pay Tompkins Township \$7,500 utilizing federal TEA - 21 Funds upon closure of the at-grade crossing at 50<sup>th</sup> Street (AAR DOT 079 228W – MP 181.28) and 180<sup>th</sup> Avenue (AAR DOT 079 227P – MP 181.14). Eligibility for the Department's \$7,500 payment to Tompkins Township is based on the requirement that the authorization of the \$7,500 by the Federal Highway Administration shall be approved prior to the physical closure of the roadway crossings by the Township or Railroad. If closure of the crossing takes place prior to federal authorization, IDOT will not participate in, nor will it be responsible for the \$7,500 funding as proposed. The \$7,500 payment by IDOT shall be used by Tompkins Township for a roadway safety related expense. The Burlington Northern and Santa Fe Railway Company shall make a matching payment in the amount of \$7,500 to Tompkins Township.

The Commission, having given due consideration to the petition and the record herein, and being fully advised in the premises is of the opinion and finds that:

1. The Burlington Northern and Santa Fe Railway Company is a corporation engaged in the transportation of property and/or passengers for hire and as such is a "rail carrier" as defined by Chapter 625 ILCS 5/18c - 1104 (30) of the Illinois Commercial Transportation Law, as amended;
2. Tompkins Township, Warren County, Illinois, and Warren County, Illinois are political subdivisions which exist by virtue of the laws of the State of Illinois;
3. the Department of Transportation of the State of Illinois is a department of the State of Illinois which exists by virtue of the laws of the State of Illinois;

4. the Commission has jurisdiction over the parties and the subject matter of these proceedings;
5. the recitals of fact set forth in the prefatory portion of this order are supported by the evidence of record and are hereby adopted as findings of fact;
6. the public convenience and necessity does not require the retention of the crossing at Tompkins Township Road, 50<sup>th</sup> Street, or the retention of the crossing at Tompkins Township Road, 180<sup>th</sup> Avenue, and public safety requires that these at grade crossings be closed, abolished and barricaded;
7. in the interest of public safety and convenience, a new at grade crossing should be established at a location approximately 165 feet east of the existing crossing at Tompkins Township Road, 50<sup>th</sup> Street, DOT No. 079 228W Milepost 181.28, with said crossing to be constructed with a concrete crossing surface and equipped with automatic flashing light signals with gates and constant warning time circuitry; this new at grade crossing being a *needed thoroughfare* and will be used by state-wide traffic;
8. in the interests of public safety and convenience, a connecting road should be built between Tompkins Township Road, 50<sup>th</sup> Street and Tompkins Township Road, 180<sup>th</sup> Avenue at a location south of Railroad's main line tracks and right of way;
9. it is fair and reasonable that the cost for the improvements set forth herein should be divided among the parties and the grade crossing protection fund of the Motor Fuel Tax Law as follows:

Table 1 Cost Division:

ITEM	ESTIMATED COST	GCPF	BNSF	LOCAL
CONCRETE CROSSING SURFACE	\$51,200	0%	100% (\$51,200)	0%
AFLS/G/CWT	\$165,622	85% (\$140,779) (1)	15% (\$24,843)	0%
LAND ACQUISITION	\$28,461.02	85% (\$24,192) (1)	15% (\$4,269.02)	0%
ROAD CONSTRUCTION	\$96,953	85% (\$82,410) (1)	15% (\$14,543)	0%
CLOSURE, CROSSING, REMOVALS, BARRICADES	No Estimate (#)		100% (#)	
<b>TOTALS</b>	<b>\$342,236.02 (#)</b>	<b>\$247,381 (1)</b>	<b>\$94,855.02 (#)</b>	<b>0%</b>

(1) amounts listed under GCPF are "not to exceed amounts."

10. 625 ILCS 5/18c - 1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the commission. The sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each days continuance of the

violation being considered a separate offense. While the Commission expects all parties to comply with this order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

11. the parties are required and directed to proceed immediately in performing the work herein required of each of them and shall complete these improvements within eighteen (18) months of the date of this Order;
12. all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to Fiscal Control Unit of the Illinois Department of Transportation, Bureau of Local Roads and Streets, Main Office, 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Illinois Department of Transportation shall submit a copy of each bill to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures shall be clearly marked "Final Bill". All bills shall be submitted to the Department no later than twenty-four (24) months from the date of this Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in this Order. The Department shall, at the end of the 32<sup>nd</sup> month from this Order date, de-obligate all residual funds accountable for installation costs for this project.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that The Burlington Northern and Santa Fe Railway Company be, and is hereby required and directed to close, abolish and install barricades conforming to 92 IAC 1535 at the grade crossings at Tompkins Township Road, 50<sup>th</sup> Street, DOT 079 228W, milepost 181.28, in Tompkins Township, Warren County, Illinois and Tompkins Township Road, 180<sup>th</sup> Avenue, DOT 079 227P, milepost 181.14.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company be, and is hereby required and directed to construct a new at grade crossing with concrete crossing surface and install automatic flashing light signals and gates with constant warning time circuitry at the new crossing location approximately 165 feet east of the currently existing Tompkins Township Road, 50<sup>th</sup> Street crossing location, DOT 079 228W, milepost 181.28, and thereafter maintain and operate the same and maintain the crossing surface.

IT IS FURTHER ORDERED that Tompkins Township, Warren County, Illinois and Warren County, Illinois be, and they are each hereby required and directed to construct a connecting road which would serve to connect Tompkins Township Road, 50<sup>th</sup> Street and Tompkins Township Road, 180<sup>th</sup> Avenue at a location south of and parallel to The

Burlington Northern and Santa Fe Railway Company's right of way and trackage in accordance with the engineering plans submitted into evidence in this cause.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company, Tompkins Township and Warren County be and they are each hereby required and directed to proceed immediately in performing the work required of them and shall complete these respective improvements within eighteen (18) months of the date of this order.

IT IS FURTHER ORDERED that the costs of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law in the manner prescribed in Finding (9) of this Order.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to Fiscal Control Unit of the Illinois Department of Transportation, Bureau of Local Roads and Streets, Main Office, 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Illinois Department of Transportation shall submit a copy of each bill to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures shall be clearly marked *A Final Bill*. All bills shall be submitted to the Department no later than twenty-four (24) months from the date of this Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in this Order. The Department shall, at the end of the 32<sup>nd</sup> month from this Order date, de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall within one hundred twenty (120) days from the date of this Order furnish to the Illinois Department of Transportation for its approval two (2) copies of the detailed estimate of cost and two (2) copies of the general layout plans applying to the installation of automatic flashing light signals and gates.

IT IS FURTHER ORDERED that Cold Brook Township and/or Warren County shall within one hundred twenty (120) days from the date of this Order furnish to the Illinois Department of Transportation for its approval two (2) copies of the detailed estimate of cost and two (2) copies of the plans applying to the construction of the proposed connecting roadway.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of a detailed cost estimates and general layout plan, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the applications herein required to be filed in accordance with Form 3 of 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission, one for each location, showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company and Tompkins Township/Warren County shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the *Director of Processing, Transportation Division of the commission* stating the progress [it / each] has made toward completion of the work herein required. Each progress report shall include the Commission order number, the order date, the project completion date as noted in this Order, crossing information (inventory number and railroad milepost), type of involvement, and project manager information (the name, title, mailing address, phone number, facsimile number, and electronic mail address) of the Railroad and Township/County employee responsible for management of the project.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required, a 6180.71 - U.S. DOT Crossing Inventory Form, one for each location where work is being performed, as a notice of said completion.

IT IS FURTHER ORDERED that Tompkins Township/Warren county shall submit a written notice, to the Director of Processing, Transportation Bureau of the Commission, of the date the work herein required of it has been completed; said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company and Tompkins Township/Warren county shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the status of expenditures of the total project, including billing for Grade Crossing Protection Fund reimbursement for their portion of the project, and percentage of completion of their portion of the project. If the project is behind schedule the report(s) must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that, any person making a Request for Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.



IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that, requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered time frame.

IT IS FURTHER ORDERED that, the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests for Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that , subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 22nd day of September, 2003.

*Edward C. Husley* 2

Chairman

JUDGE	<i>[Signature]</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>